September 2025

THE PEW CHARITABLE TRUST'S COMMENTARY

ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON EXPLOITATION OF MINERAL RESOURCES IN THE AREA, DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)

Key

Black font, red font, and grey text-boxes are replicated from the Draft Regulations text.

Blue font represents commentary or edits proposed by The Pew Charitable Trusts.

Regulation 19

Joint arrangements

1. Exploitation Contracts may provide for joint arrangements between a Contractor and the Authority through the Enterprise, in the form of joint ventures or production-sharing, as well as any other form of joint arrangement, which shall have the same protections ~~[against revision, suspension or termination]~~ as Exploitation C~~c~~ontracts with the Authority.

2. The Council shall enable the Enterprise to engage in [exploration or exploitation activities] ~~[seabed mining]~~ effectively at the same time as the entities referred to in Article 153, paragraph 2 (b), of the Convention.

2. bis. Before approving any Exploitation Contract with an entity referred to in Article 153, paragraph 2(b), of the Convention, the Authority shall adopt Standards and Guidelines

(a) providing for joint arrangements between a Contractor and the Enterprise, pursuant to Article 11 of Annex III of the Convention; and

(b) in relation to financial terms, to further the objective of enabling the Enterprise to engage in exploration or exploitation activities, pursuant to Article 13(1)(e) of Annex III of the Convention.

We are concerned that DR19 does not properly incorporate UNCLOS' requirement in some cases for the Enterprise to be offered joint venture opportunity. DR19 currently reflects Article 11 of Annex III to UNCLOS, which allows Exploitation Contracts to cover joint arrangements with the Enterprise. This is phrased as discretionary. But DR19 does not currently cover the specific situation with **reserved areas**, in which the Enterprise has a right to join with the Contractor: namely:

- If an applicant for a Contract for a reserved area is a developing country (or sponsored by one), then the Enterprise has a right to decide whether or not to enter a joint venture for the area's exploitation. This is not discretionary. A plan of work cannot be considered unless and until the Enterprise has taken this decision. [Article 9 of Annex III of UNCLOS].
- If an applicant for a Contract for a reserved area is not a developing country (or sponsored by one), but the contractor that originally contributed the reserved area is applying 15 years later for that site, the applicant must offer in good faith to include the Enterprise as a joint-venture partner. This is not discretionary. [Section 2(5) of the Annex to the 1994 Agreement].

We consider these important parts of the regime also need to be included in this DR19, in order **not to undermine and weaken the Enterprise's role**, and in particular the Enterprise's ability to bring opportunity of effective participation to developing States Parties and their nationals [Article 9(2) of Annex III to UNCLOS]

Comments

- It has been suggested by a delegation amending paragraph 1 to refer more generally to "*protections*" without limiting that to "*revision, suspension and termination*".
- The reference to "*seabed mining*" has been suggested changed to "*exploration or exploitation activities*".
- Several delegations have asked for the reinsertion of draft regulation 2 bis.
- In the context of intersessional work, it has been raised whether more detailed, technical rules on joint ventures are required. As reflected in paragraph 2 bis, such more detailed rules are proposed to be incorporated into Standards.

The drafting in **paragraph (1)** (without deletion) replicated UNCLOS (Article 11(1) of Annex III). We are concerned that the proposed deletion would change the meaning inaccurately. For this reason, it seems better to adhere to the UNCLOS wording, or – our preference – to delete this sub-clause relating to protection entirely. We see it as redundant to repeat this specific UNCLOS provision in the Regulations, as UNCLOS already binds the ISA (who are the actor required to provide such protection).

The second comment in the President's comment box relates to **paragraph (2)**. We agree generally with the Regulations using consistent terminology (and additionally would like to see 'capitalisation' where defined terms are used). We support re-insertion of **paragraph (2 bis)**. UNCLOS requires the ISA to develop **RRPs relating to the Enterprise** [Article 160 and Annex IV]. As far as we are aware, no work has commenced on such RRPs. We agree with the member States who have called for greater focus on development of such rules. In 2018 the African Group highlighted that eleven exploration contractors had already taken up the option to offer an equity interest in a future joint venture arrangement with the Enterprise;[1] and that despite specific joint venture offers received by the ISA in 2012 and 2018, and agreement in ISA meetings to develop the terms and conditions upon which such equity participation may be obtained, the relevant rules remained in need of elaboration.[2] That statement remains true at the end of 2024. Germany, during the first part of the 29th session, summarised the risk that indefinite postponement by the Council in developing the rules for joint ventures causes the Enterprise to be excluded from activities in the Area, in contravention to UNCLOS.

[1] Polymetallic sulphides: COMRA in 2011, the Russian Federation in 2012, IFREMER in 2014, the Republic of Korea in 2014, the Federal Republic of Germany in 2015, India in 2016 and the Republic of Poland in 2018. Cobalt-rich ferromanganese crusts: COMRA in 2014, JOGMEC in 2014, Companhia De Pesquisa de Recursos Minerais in 2015 and the Republic of Korea in 2018.

[2] For example, in the July 2014 Summary report of the Chair of the LTC (ISBA/20/C/20: https://www.isa.org.jm/document/isba20c20), and again in 2016 (ISBA/22/LTC/9: https://www.isa.org.jm/document/isba22ltc9).